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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 CURTIS B., an Individual,

12 Plaintiff,

13 v.

14 ANDREW M. SAUL, Commissioner of  
15 Social Security,

16 Defendant.

Case No.: 5:18-01051 ADS

MEMORANDUM OPINION AND ORDER  
OF REMAND

17 **I. INTRODUCTION**

18 Plaintiff Curtis B.<sup>1</sup> (“Plaintiff”) challenges Defendant Andrew M. Saul<sup>2</sup>,  
19 Commissioner of Social Security’s (hereinafter “Commissioner” or “Defendant”) denial  
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22 <sup>1</sup> Plaintiff’s name has been partially redacted in compliance with Federal Rule of Civil  
23 Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court  
Administration and Case Management of the Judicial Conference of the United States.

24 <sup>2</sup> The complaint, and thus the docket, do not name the Commissioner of Social Security.  
On June 17, 2019, Saul became the Commissioner. Thus, he is automatically substituted  
as the defendant under Federal Rule of Civil Procedure 25(d).

1 of his application for supplemental security income (“SSI”). For the reasons stated  
2 below, the decision of the Commissioner is REVERSED and REMANDED.

3 **II. FACTS RELEVANT TO THE APPEAL**

4 A review of the entire record reflects certain uncontested facts relevant to this  
5 appeal. Prior to filing his application for social security benefits, Plaintiff last worked in  
6 June 2005 as a cook for Boston Market. (Administrative Record “AR” 21, 174-75.)  
7 Plaintiff alleges his medical condition became severe enough to keep him from working  
8 on January 1, 2012. (AR 21-22, 174). His claim for disability was based on his reverse  
9 spine, back problems, migraine headaches, nerve damage, and high blood pressure. (AR  
10 174). Plaintiff further alleged that his pain and restlessness increased after filing the  
11 application. (AR 231). He stated that some days he can bathe himself, but other days  
12 his wife and children have to care for him and the house because he’s in so much pain.  
13 (AR 203). Plaintiff indicated that he “just sit[s] around in pain,” and the pain makes it  
14 difficult for him to take care of his personal needs. (AR 21, 203, 235). He alleged that  
15 he has been treated for physical and mental problems, and his medication causes side  
16 effects, including dizziness and drowsiness. (AR 21, 202, 232, 234).

17 Plaintiff first saw Sarah L. Buenviaje-Smith, M.D. on May 14, 2013, for pain  
18 management of his neck, low back, arm, leg, and joints, and for headaches. (AR 344,  
19 384). Dr. Buenviaje-Smith examined him and made a number of findings. (AR 347).  
20 She diagnosed Plaintiff with lumbar and cervical radiculopathy, lumbar and cervical  
21 facet joint disease, and cervical stenosis. (Id.).

22 On May 29, 2013, Plaintiff returned to Dr. Buenviaje-Smith. (AR 343). He was  
23 examined, given an injection, and his Norco medication was increased. (Id.).  
24

1 On July 24, 2013, Plaintiff saw Dr. Buenviaje-Smith again. (AR 342). He was  
2 examined, his medications refilled, and he was given another injection. (Id.). On  
3 August 21, 2013, Plaintiff complained of increased pain in the lower back, left leg, and  
4 neck. (AR 361). Dr. Buenviaje-Smith made findings, increased one of his medications,  
5 and gave him another injection. (Id.).

6 Plaintiff saw Dr. Buenviaje-Smith again on September 25 and October 23, 2013.  
7 (AR 359-60). Examination findings were unchanged, and he received injections. (Id.).  
8 On November 20 and December 18, 2013, Plaintiff was seen again by the doctor, and his  
9 medications were refilled. (AR 357-58). On January 15, 2014, Plaintiff again returned  
10 to the doctor, she made findings, he was given an injection, and advised to take part in  
11 physical therapy. (AR 356).

12 On February 12, 2014, Plaintiff reported physical therapy increased his pain. (AR  
13 427). He was given injections. (AR 428). On March 5, March 13, and April 9, 2014,  
14 Plaintiff was given additional injections. (AR 417-19, 421). On May 8, 2014, Dr.  
15 Buenviaje-Smith performed a medial branch nerve block procedure on Plaintiff. (AR  
16 414-15).

17 On June 5, 2014, Plaintiff reported to Dr. Buenviaje-Smith a 70 percent  
18 improvement in pain after nerve block injections, but lasting about four or five days.  
19 (AR 412). The doctor performed an examination, made findings, and gave him an  
20 injection. (Id.). Plaintiff was given Valium, and two medications, Tizandine and Elavil,  
21 were increased. (AR 413). A lumbar radiofrequency ablation was also scheduled. (Id.).

22 On July 31, 2014, Plaintiff underwent lumbar radiofrequency ablation on the left.  
23 (AR 411). On August 14, 2014, Plaintiff underwent lumbar radiofrequency ablation on  
24 the right. (AR 409).

1 On October 2, October 30, and December 23, 2014, and January 22, February 18,  
2 2015, Plaintiff saw Dr. Buenviaje-Smith, was prescribed new medications, and received  
3 injections. (AR 397-98, 401, 403, 405-06).

4 On March 26, 2015, Plaintiff reported to Dr. Buenviaje-Smith good relief from  
5 injections lasting a few weeks. (AR 395). Plaintiff, however, also reported seeking  
6 emergency treatment after a fall two weeks prior, and 8/10 aching pain in his low back  
7 and left leg. (Id.). He was given injections during the visit. (AR 395-96).

8 On April 17, 2015, Dr. Buenviaje-Smith completed a Residual Functional Capacity  
9 ("RFC") Questionnaire. (AR 383-85). The doctor opined that Plaintiff could walk less  
10 than one block without resting or significant pain, could only sit, stand or walk for 45  
11 minutes at a time, could only sit for four hours total per workday and stand/walk for  
12 only two hours total per workday, and would need to take unscheduled breaks every two  
13 hours. (AR 385). She found that Plaintiff could lift and carry 10 pounds occasionally  
14 and could never lift more than 20 pounds. (Id.). She found that Plaintiff had  
15 limitations in repetitive reaching, handling, and fingering. (Id.). She noted that  
16 Plaintiff was not a malingerer. (Id.). She opined that Plaintiff was likely to be absent  
17 from work more than four times per month. (Id.). She concluded that she did not  
18 believe Plaintiff was physically capable of working an eight-hour day, five days a week,  
19 on a sustained basis. (Id.).

20 On July 15, 2015, Plaintiff had another right lumbar radiofrequency ablation.  
21 (AR 525-26). On July 29, 2015, Plaintiff had another left lumbar radiofrequency  
22 ablation. (AR 522, 524). On September 9, November 4, and December 14, 2015,  
23 Plaintiff received injections. (AR 514, 517, 520).

1 On January 28, 2016, Plaintiff requested from Dr. Buenviaje-Smith another  
2 lumbar radiofrequency ablation. (AR 510). He was given injections and prescribed  
3 Soma. (AR 511). On February 25, 2016, Plaintiff was given lumbar nerve blocks and  
4 prescribed Cyclobenzaprine. (AR 507-09). On March 10, 2016, Plaintiff was given  
5 lumbar nerve block injections. (AR 504-06).

6 On April 7, 2016, Dr. Buenviaje-Smith gave him an injection. (AR 503). On May  
7 19, 2016, she gave him trigger-point injections. (AR 501,). On July 14, 2016, she gave  
8 him B12 injections. (AR 499).

9 On September 14, 2016, Plaintiff reported to Dr. Buenviaje-Smith continuing  
10 pain and that physical therapy was not helping. (AR 496). He was given B12 injections  
11 and authorization was requested for cervical facet injections. (AR 497). On October 12,  
12 2016, Plaintiff was unable to lie down on the examination table for an injection due to  
13 pain. (AR 494). He was prescribed Robaxin. (AR 495). On November 9, 2016,  
14 Dr. Buenviaje-Smith gave him paravertebral facet joint injections. (AR 492-93).

### 15 **III. PROCEEDINGS BELOW**

#### 16 **A. Procedural History**

17 Plaintiff protectively filed his application for SSI on September 2, 2014, alleging  
18 disability beginning January 1, 2012. (AR 16, 148-52, 154-61). The application was  
19 denied initially on January 2, 2015 (AR 65), and upon reconsideration on July 7, 2015  
20 (AR 83). A hearing was held before ALJ Norman L. Bennett on January 27, 2017. (AR  
21 32-53). Plaintiff, represented by counsel, appeared and testified at the hearing, as well  
22 as a vocational expert. (Id.).

1 On April 17, 2017, the ALJ found that Plaintiff was “not disabled” within the  
2 meaning of the Social Security Act.<sup>3</sup> (AR 16-27). The ALJ’s decision became the  
3 Commissioner’s final decision when the Appeals Council denied Plaintiff’s request for  
4 review on March 16, 2018. (AR 1-5). Plaintiff then filed this action in District Court on  
5 May 16, 2018, challenging the ALJ’s decision. [Docket (“Dkt.”) No. 1].

6 On October 9, 2018, Defendant filed an Answer, as well as a copy of the Certified  
7 Administrative Record. [Dkt. Nos. 17, 18]. On November 18, 2018, Plaintiff filed a  
8 Memorandum in Support of the Complaint. [Dkt. No. 19]. On March 21, 2019, the  
9 Commissioner filed a Memorandum in Support of the Answer. [Dkt. No. 27]. On April  
10 4, 2019, Plaintiff filed a Reply. [Dkt. No. 28]. The case is ready for decision.<sup>4</sup>

### 11 **B. Summary of ALJ Decision After Hearing**

12 In the ALJ’s decision of April 17, 2017 (AR 16-27), the ALJ followed the required  
13 five-step sequential evaluation process to assess whether Plaintiff was disabled under  
14 the Social Security Act.<sup>5</sup> 20 C.F.R. § 416.920(a)(4). At **step one**, the ALJ found that

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16 <sup>3</sup> Persons are “disabled” for purposes of receiving Social Security benefits if they are  
17 unable to engage in any substantial gainful activity owing to a physical or mental  
18 impairment expected to result in death, or which has lasted or is expected to last for a  
19 continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

18 <sup>4</sup> The parties filed consents to proceed before the undersigned United States Magistrate  
19 Judge, pursuant to 28 U.S.C. § 636(c), including for entry of final Judgment. [Dkt. Nos.  
20 10, 13].

21 <sup>5</sup> The ALJ follows a five-step sequential evaluation process to assess whether a claimant  
22 is disabled: Step one: Is the claimant engaging in substantial gainful activity? If so, the  
23 claimant is found not disabled. If not, proceed to step two. Step two: Does the claimant  
24 have a “severe” impairment? If so, proceed to step three. If not, then a finding of not  
disabled is appropriate. Step three: Does the claimant’s impairment or combination of  
impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1?  
If so, the claimant is automatically determined disabled. If not, proceed to step four.  
Step four: Is the claimant capable of performing his past work? If so, the claimant is not  
disabled. If not, proceed to step five. Step five: Does the claimant have the RFC to  
perform any other work? If so, the claimant is not disabled. If not, the claimant is  
disabled. Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

1 Plaintiff had not engaged in substantial gainful activity since September 2, 2014, the  
2 application date. (AR 17). At **step two**, the ALJ found that Plaintiff had the following  
3 severe impairments: (a) obesity; (b) degenerative disc disease of the lumbosacral spine;  
4 and (c) degenerative disc disease of the cervical spine. (AR 18).

5 At **step three**, the ALJ found that Plaintiff “did not have an impairment or  
6 combination of impairments that met or medically equaled the severity of one of the  
7 listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.925 and  
8 416.926.” (AR 18). The ALJ then found that Plaintiff had the RFC<sup>6</sup> “to perform a full  
9 range of sedentary work as defined in 20 CFR 416.967(a)”<sup>7</sup>. (AR 21).

10 At **step four**, based on Plaintiff’s RFC and the vocational expert’s testimony, the  
11 ALJ found that Plaintiff was unable to perform his past relevant work as a short order  
12 cook. (AR 26).

13 At **step five**, the ALJ found that, “[c]onsidering [Plaintiff]’s age, education, work  
14 experience[,] and [RFC], there were jobs that existed in significant numbers in the  
15 national economy that he was able to perform,” and that a finding of “not disabled” was  
16 directed by Medical-Vocational Rule 201.25. (AR 27). As such, the ALJ concluded  
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18 <sup>6</sup> An RFC is what a claimant can still do despite existing exertional and nonexertional  
19 limitations. See 20 C.F.R. § 416.945(a)(1).

20 <sup>7</sup> “Sedentary work” is:

21 lifting no more than 10 pounds at a time and occasionally lifting or  
22 carrying articles like docket files, ledgers, and small tools. Although a  
23 sedentary job is defined as one which involves sitting, a certain amount of  
24 walking and standing is often necessary in carrying out job duties. Jobs  
are sedentary if walking and standing are required occasionally and other  
sedentary criteria are met.

20 C.F.R. § 416.967(a); see also Casey H. v. Berryhill, 2018 WL 5629303, at \*3 n.3 (C.D.  
Cal. Oct. 29, 2018).

1 Plaintiff was not under a disability, as defined in the Social Security Act, since the  
2 protective filing date of September 2, 2014. (Id.).

#### 3 **IV. ANALYSIS**

##### 4 **A. Issues on Appeal**

5 Plaintiff raises two issues for review, whether the ALJ: (1) properly rejected the  
6 treating physician opinion of Dr. Buenviaje-Smith; and (2) erred by failing to include  
7 any mental limitations in the RFC.<sup>8</sup> [Dkt. No. 19, p. 3]. For the reasons below, the  
8 Court agrees with Plaintiff that the ALJ failed to properly consider the treating physician  
9 opinion, and remands on that ground.

##### 10 **B. Standard of Review**

11 A United States District Court may review the Commissioner's decision to deny  
12 benefits pursuant to 42 U.S.C. § 405(g). The District Court is not a trier of the facts but  
13 is confined to ascertaining by the record before it if the Commissioner's decision is  
14 based upon substantial evidence. Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014)  
15 (District Court's review is limited to only grounds relied upon by ALJ) (citing Connett v.  
16 Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)). A court must affirm an ALJ's findings of  
17 fact if they are supported by substantial evidence and if the proper legal standards were  
18 applied. Mayes v. Massanari, 276 F.3d 453, 458-59 (9th Cir. 2001).

19 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a specific  
20 quantum of supporting evidence. Rather, a court must consider the record as a whole,  
21 weighing both evidence that supports and evidence that detracts from the Secretary’s  
22 conclusion.” Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citations and  
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24 <sup>8</sup> The Court addresses the claims in a different order than presented by Plaintiff.



1 internal quotation marks omitted). “Where evidence is susceptible to more than one  
2 rational interpretation,’ the ALJ’s decision should be upheld.” Ryan v. Comm’r of Soc.  
3 Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (citing Burch v. Barnhart, 400 F.3d 676, 679  
4 (9th Cir. 2005)); see Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) (“If  
5 the evidence can support either affirming or reversing the ALJ’s conclusion, we may not  
6 substitute our judgment for that of the ALJ.”). However, the Court may review only “the  
7 reasons provided by the ALJ in the disability determination and may not affirm the ALJ  
8 on a ground upon which he did not rely.” Orn v. Astrue, 495 F.3d 625, 630 (9th Cir.  
9 2007) (citation omitted).

10 **C. The ALJ Failed to Properly Consider the Opinion of Plaintiffs**  
11 **Treating Physician**

12 Plaintiff contends the ALJ erred in rejecting the RFC questionnaire and opinion  
13 of treating physician Dr. Buenviaje-Smith. [Dkt. No. 19, pp. 22-27; Dkt. No. 28, pp. 4-  
14 5].

15 **1. Standard for Weighing Medical Opinions**

16 The ALJ must consider all medical opinion evidence. 20 C.F. R. § 416.927(b).  
17 “As a general rule, more weight should be given to the opinion of a treating source than  
18 to the opinion of doctors who do not treat the claimant.” Lester, 81 F.3d at 830 (citing  
19 Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987)). Where the treating doctor’s  
20 opinion is not contradicted by another doctor, it may only be rejected for “clear and  
21 convincing” reasons. Id. (citing Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005)).  
22 “If a treating or examining doctor’s opinion is contradicted by another doctor’s opinion,  
23 an ALJ may only reject it by providing specific and legitimate reasons that are supported  
24 by substantial evidence.” Trevizo v. Berryhill, 871 F.3d 664, 675 (9th Cir. 2017) (quoting

1 Bayliss, 427 F.3d at 1216). In Trevizo, the Ninth Circuit addressed the factors to be  
2 considered in assessing a treating physician's opinion.

3 The medical opinion of a claimant's treating physician is given  
4 "controlling weight" so long as it "is well-supported by medically  
5 acceptable clinical and laboratory diagnostic techniques and is not  
6 inconsistent with the other substantial evidence in [the claimant's] case  
7 record." 20 C.F.R. § 404.1527(c)(2). When a treating physician's  
8 opinion is not controlling, it is weighted according to factors such as the  
length of the treatment relationship and the frequency of examination,  
the nature and extent of the treatment relationship, supportability,  
consistency with the record, and specialization of the physician. Id.  
§ 404.1527(c)(2)-(6)."

9 871 F.3d at 675.

10 "Substantial evidence" means more than a mere scintilla, but less than a  
11 preponderance; it is such relevant evidence as a reasonable person might accept as  
12 adequate to support a conclusion." Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir.  
13 2007) (citing Robbins, 466 F.3d at 882). "The ALJ can meet this burden by setting out a  
14 detailed and thorough summary of the facts and conflicting clinical evidence, stating his  
15 interpretation thereof, and making findings." Magallanes v. Bowen, 881 F.2d 747, 751  
16 (9th Cir. 1989) (citation omitted); see also Tommasetti v. Astrue, 533 F.3d 1035, 1041  
17 (9th Cir. 2008) (finding ALJ had properly disregarded a treating physician's opinion by  
18 setting forth specific and legitimate reasons for rejecting the physician's opinion that  
19 were supported by the entire record).

20 2. The ALJ Failed to Provide Specific and Legitimate Reasons, Supported  
21 by Substantial Evidence, for Rejecting the Opinion of Dr. Buenviaje-  
Smith

22 Here, the ALJ did not summarize Dr. Buenviaje-Smith's RFC questionnaire, or  
23 discuss the limitations assessed in her opinion. (AR 25). The ALJ simply assigned the  
24 questionnaire "little weight" because:

1 This doctor is a general practitioner and, therefore, her opinion rested,  
2 at least in part, on the assessment of impairments outside her area of  
3 practice. Further, her own reports failed to reveal the type of significant  
4 clinical and laboratory abnormalities one would expect if the [Plaintiff]  
5 were in fact disabled, and the doctor did not specifically address this  
6 weakness. In addition, her opinion contrasted sharply and was without  
7 support from the other evidence of record, which rendered it less  
8 persuasive.

9 (AR 25).

10 Regarding the first reason—that the doctor’s opinion was allegedly outside her  
11 area of practice—Plaintiff points out that Dr. Buenviaje-Smith is triple board certified in  
12 pain management, anesthesiology, and palliative care<sup>9</sup> and hospice medicine. [Dkt. No.  
13 19, p. 26]. Plaintiff saw her for pain, and she treated him for pain, an area clearly within  
14 her expertise. Indeed, the Commissioner does not refute the doctor’s credentials, or  
15 attempt to defend this as a valid reason for discounting the opinion. See, e.g., Kinley v.  
16 Astrue, 2013 WL 494122, at \*3 (S.D. Ind. Feb. 8, 2013) (“The Commissioner does not  
17 respond to this [aspect of claimant’s] argument, and it is unclear whether this is a tacit  
18 admission by the Commissioner that the ALJ erred or whether it was an oversight.  
19 Either way, the Commissioner has waived any response.”). Accordingly, the first reason  
20 is not a specific and legitimate reason for discounting the opinion. See Lester, 81 F.3d at  
21 830-31; Valdez-Canez v. Colvin, 2017 WL 2351664, at \*7 (D. Ariz. May 31, 2017) (“a  
22 physician’s opinion cannot be disregarded simply because it addresses a topic outside  
23 his or her expertise”).

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24 <sup>9</sup> “Palliative care is specialized medical care that focuses on providing patients relief  
from pain and other symptoms of a serious illness, no matter the diagnosis or stage of  
disease.” See Palliative care, Mayo Clinic, <https://www.mayoclinic.org/tests-procedures/palliative-care/about/pac-20384637> (last visited November 20, 2019).

1           The second reason is also deficient. Although the ALJ mentioned some of Dr.  
2 Buenviaje-Smith's records earlier in the decision, (AR 24), it is unclear in his analysis of  
3 her opinion how he concluded that they did not reveal "significant clinical and  
4 laboratory abnormalities." (AR 25). The ALJ mentions no treatment records in his  
5 evaluation of the opinion, and the record as a whole does not support his conclusion. As  
6 detailed above, Plaintiff routinely met with Dr. Buenviaje-Smith, she examined him,  
7 made detailed findings, and treated him with medication, injections, and other  
8 procedures. In the opinion, she specifically noted her treatment of Plaintiff for nearly  
9 two-years, "at least monthly." (AR 383-84). Accordingly, the ALJ's second reason is not  
10 a specific and legitimate reason to discount the opinion. See Brown-Hunter v. Colvin,  
11 806 F.3d 487, 492 (9th Cir. 2015) (federal courts "demand that the agency set forth the  
12 reasoning behind its decisions in a way that allows for meaningful review"); Blakes v.  
13 Barnhart, 331 F.3d 565, 569 (7th Cir. 2003) (citations omitted) ("We require the ALJ to  
14 build an accurate and logical bridge from the evidence to [his] conclusions so that we  
15 may afford the claimant meaningful review of the SSA's ultimate findings.").

16           The third and final reason is similarly deficient. The decision fails to explain how  
17 the opinion "contrasted sharply" and was "without support from the other evidence of  
18 record." (AR 25). The ALJ does not identify what "other evidence" he relied on in  
19 discounting the opinion, thus leaving nothing for the Court to review. See Brown-  
20 Hunter, 806 F.3d at 492; Blakes, 331 F.3d at 569. Accordingly, the ALJ did not meet his  
21 burden of "setting out a detailed and thorough summary of the facts and conflicting  
22 clinical evidence stating his interpretation thereof, and making findings." Magallanes,  
23 881 F.2d at 751. As such, the Court reverses the ALJ's finding that Dr. Buenviaje-

1 Smith's opinion is entitled to little weight and remands for reassessment of the  
2 appropriate weight consistent with this decision.

3 **D. The Court Declines to Address Plaintiff's Remaining Arguments**

4 Having found that remand is warranted, the Court declines to address Plaintiff's  
5 remaining argument. See Hiler v. Astrue, 687 F.3d 1208, 1212 (9th Cir. 2012) ("Because  
6 we remand the case to the ALJ for the reasons stated, we decline to reach [plaintiff's]  
7 alternative ground for remand."); see also Alderman v. Colvin, 2015 WL 12661933, at \*8  
8 (E.D. Wash. Jan. 14, 2015) (remanding in light of interrelated nature of ALJ's decision  
9 to discount claimant's credibility and give appropriate consideration to physician's  
10 opinions, step-two findings, and step-five analysis); Augustine ex rel. Ramirez v. Astrue,  
11 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008) ("[The] Court need not address the other  
12 claims plaintiff raises, none of which would provide plaintiff with any further relief than  
13 granted, and all of which can be addressed on remand."). Because it is unclear whether  
14 Plaintiff is in fact disabled, remand here is on an "open record." See Brown-Hunter, 806  
15 F.3d at 495; Bunnell v. Barnhart, 336 F.3d 1112, 1115-16 (9th Cir. 2003). The parties  
16 may freely take up all issues raised in the briefing before the Court, and any other issues  
17 relevant to resolving Plaintiff's claim of disability, before the ALJ.

18 **E. Remand For Further Administrative Proceedings**

19 Remand for further administrative proceedings, rather than an award of benefits,  
20 is warranted because further administrative review could remedy the ALJ's errors. See  
21 Brown-Hunter, 806 F.3d at 495 (remanding for an award of benefits is appropriate in  
22 rare circumstances). On remand, the ALJ shall properly review and evaluate the  
23 treating physician opinion and reassess Plaintiff's RFC. The ALJ shall then proceed  
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1 through steps four and five, if necessary, to determine what work, if any, Plaintiff is  
2 capable of performing.

3 **V. ORDER**

4 IT IS ORDERED that Judgment shall be entered REVERSING the decision of the  
5 Commissioner denying benefits, and REMANDING the matter for further proceedings  
6 consistent with this Order. Judgement shall be entered accordingly.

7  
8 DATE: March 19, 2020

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10 /s/ Autumn D. Spaeth  
11 THE HONORABLE AUTUMN D. SPAETH  
12 United States Magistrate Judge  
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